

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals  
for the Second Circuit, held at the Daniel Patrick Moynihan  
United States Courthouse, 500 Pearl Street, in the City of  
New York, on the 1<sup>st</sup> day of April, two thousand eight.

**PRESENT:**

HON. RALPH K. WINTER,  
HON. GUIDO CALABRESI,  
HON. ROSEMARY S. POOLER,  
*Circuit Judges.*

XIAO HUI LIN,  
*Petitioner,*

v.

MICHAEL B. MUKASEY,  
U.S. ATTORNEY GENERAL,<sup>1</sup>  
*Respondent.*

07-1690-ag  
NAC

<sup>1</sup>Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as the respondent in this case.

1     **FOR PETITIONER:**             **Oleh R. Tustaniwsky, Brooklyn, New**  
2                                     **York.**

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4     **FOR RESPONDENT:**           **Peter D. Keisler, Assistant Attorney**  
5                                     **General; Cindy S. Ferrier, Senior**  
6                                     **Litigation Counsel; Matt A. Crapo,**  
7                                     **Trial Attorney, Office of**  
8                                     **Immigration Litigation, U.S.**  
9                                     **Department of Justice, Washington,**  
10                                    **D.C.**  
11

12             UPON DUE CONSIDERATION of this petition for review of a  
13     decision of the Board of Immigration Appeals ("BIA"), it is  
14     hereby ORDERED, ADJUDGED, AND DECREED, that the petition for  
15     review is DENIED.

16             Petitioner Xiao Hui Lin, a citizen of the People's  
17     Republic of China, seeks review of a March 26, 2007 order of  
18     the BIA affirming the October 17, 2005 decision of  
19     Immigration Judge ("IJ") Brigitte Laforest denying  
20     petitioner's applications for asylum, withholding of  
21     removal, and relief under the Convention Against Torture  
22     ("CAT"). *In re Xiao Hui Lin*, No. A98 718 140 (B.I.A. Mar.  
23     26, 2007), *aff'g* No. A98 718 140 (Immig. Ct. N.Y. City, Oct.  
24     17, 2005). We assume the parties' familiarity with the  
25     underlying facts and procedural history of the case.

26             Where, as here, the BIA agrees with the IJ's conclusion  
27     that a petitioner is not credible and, without rejecting any  
28     of the IJ's grounds for decision, emphasizes particular

1 aspects of that decision, this Court reviews both the BIA's  
2 and IJ's opinions - or more precisely, the Court reviews the  
3 IJ's decision including the portions not explicitly  
4 discussed by the BIA. *Yun-Zui Guan v. Gonzales*, 432 F.3d  
5 391, 394 (2d Cir. 2005). This Court reviews the agency's  
6 factual findings, including adverse credibility  
7 determinations, under the substantial evidence standard,  
8 treating them as "conclusive unless any reasonable  
9 adjudicator would be compelled to conclude to the contrary."  
10 8 U.S.C. § 1252(b)(4)(B); see *Zhou Yun Zhang v. INS*, 386  
11 F.3d 66, 73 & n.7 (2d Cir. 2004), *overruled in part on other*  
12 *grounds by Shi Liang Lin v. U.S. Dep't. of Justice*, 494 F.3d  
13 296, 305 (2d Cir. 2007) (en banc). However, the Court will  
14 vacate and remand for new findings if the agency's reasoning  
15 or its fact-finding process was sufficiently flawed. *Cao He*  
16 *Lin v. U.S. Dep't of Justice*, 428 F.3d 391, 406 (2d Cir.  
17 2005).

18 As an initial matter, contrary to the government's  
19 argument, we have jurisdiction to review Lin's challenge to  
20 the agency's denial of relief under the CAT. Lin's failure  
21 to exhaust this category of relief, see 8 U.S.C.  
22 § 1252(d)(1), is excused because, in its decision, the BIA

1 specifically addressed Lin's CAT claim. See *Xian Tuan Ye v.*  
2 *DHS*, 446 F.3d 289, 296-297 (2d Cir. 2006); *Waldron v. INS*,  
3 17 F.3d 511, 515 n.7 (2d Cir. 1994).

4 However, in addition to the statutory requirement that  
5 petitioners exhaust each category of relief, this Court  
6 generally will not consider arguments regarding individual  
7 issues that were not exhausted before the agency. *Lin Zhong*  
8 *v. U.S. Dep't of Justice*, 480 F.3d 104, 107 n.1, 122-123 (2d  
9 Cir. 2007). While not jurisdictional, this judicially-  
10 imposed issue exhaustion requirement is mandatory. *Id.* at  
11 119-120. In particular, a petitioner must challenge all  
12 findings that are dispositive of his claims, and the failure  
13 to do so is fatal to his petition for review. See *Steevenez*  
14 *v. Gonzales*, 476 F.3d 114, 117-118 (2d Cir. 2007).

15 In his appeal to the BIA, Lin failed to challenge any  
16 of the inconsistencies that formed the basis of the IJ's  
17 adverse credibility finding.<sup>2</sup> His argument to the BIA  
18 regarding credibility, that the IJ should have given him  
19 "the benefit of the doubt," was not sufficient to exhaust  
20 the arguments he raises before this Court as to the IJ's

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<sup>2</sup>We note that the Government has asserted exhaustion as an affirmative defense in this case. See *Lin Zhong*, 480 F.3d at 124.

1 individual inconsistency and implausibility findings. See  
2 *Steevenez*, 476 F.3d at 117-118.

3 Furthermore, while the BIA referred to the IJ's  
4 specific adverse credibility findings, its mere mention of  
5 those findings does not excuse Lin's failure to offer any  
6 meaningful challenge to those findings before the BIA. *Cf.*  
7 *Waldron*, 17 F.3d at 515 n.7; *Xian Tuan Ye*, 446 F.3d at 296-  
8 297. Indeed, the BIA specifically noted in its decision  
9 that Lin did not "specifically address or provide a  
10 reasonable explanation for any of the inconsistencies"  
11 relied upon by the IJ in her decision.

12 Thus, because we find that Lin failed to exhaust any  
13 challenge to the agency's adverse credibility finding, and  
14 because that finding was dispositive of each of Lin's  
15 applications for relief, see *Majidi v. Gonzales*, 430 F.3d 77  
16 (2d Cir. 2005), we deny the petition for review, see  
17 *Steevenez*, 476 F.3d at 117-118.

18 For the foregoing reasons, the petition for review is  
19 DENIED. As we have completed our review, the pending motion  
20 for a stay of removal in this petition is DISMISSED as moot.

21 FOR THE COURT:  
22 Catherine O'Hagan Wolfe, Clerk  
23

24 By: \_\_\_\_\_